

EVANGELO ARVANETES  
Assistant Federal Defender  
Federal Defenders of Montana  
104 2<sup>nd</sup> Street South, Suite 301  
Great Falls, Montana 59401  
vann\_arvanetes@fd.org  
Phone: (406) 727-5328  
Fax: (406) 727-4329  
Attorneys for Defendant

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAYCOB TYLER KUTZERA,

Defendant.

**Case No. CR-17-48-GF-BMM**

**NOTICE OF EXPERT  
TESTIMONY IN COMPLIANCE  
WITH RULE 16**

COMES NOW, Defendant, Jaycob Tyler Kutzera (Mr. Kutzera), through his Counsel Evangelo Arvanetes, Assistant Federal Defender and the Federal Defenders of Montana, Inc., and respectfully notifies the United States Government of his intent to present the testimony of Bowman Smelko, Psy.D, ABPP pursuant to Rules 702-705 of the Federal Rules of Evidence. Pursuant to Rule 16(b)(1)(C) of the Federal Rules of Criminal Procedure, Mr. Kutzera further provides the Government with the

following summary of Mr. Smelko's expected testimony.

**A. Qualifications**

A copy of Dr. Smelko's Curriculum Vitae (CV) is attached as (Exhibit A).

Briefly, Dr. Smelko is a licensed psychologist and board certified forensic psychologist. In addition, he owns and operates Capital City Consultants.

He holds a Bachelor of Science degree in Social Studies from Western Montana College in Dillon, Montana, a Bachelors of Science in Psychology from Carroll College in Helena, Montana, and a Doctorate in Clinical Psychology from the Forest Institute of Professional Psychology in Springfield, Missouri.

He has extensive training and experience as a psychiatrist in forensic psychiatry which includes areas in sex offender evaluations, juvenile mental health, and many other psychological conditions.

**B. Basis and Reasons for Opinion**

Per Indictment the Government is charging Mr. Kutzera with 36 counts of sexual exploitation of a child where it claims that Mr. Kutzera did employ, use, persuade, induce, entice, and coerce any minor, Jane Doe, who is known to the defendant but whose name is withheld to protect her identity, to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct knowing and having reason to know that such visual depiction would be transported

in and affecting interstate and foreign commerce, and using materials that have been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer, in violation of 18 U.S.C. § 2251(a).

Based upon his experience as a forensic psychologist, Dr. Smelko will explain sexual fantasy and/or sexual role play to the jury. In addition, Dr. Smelko will testify that many individuals fantasize about sexual activity – deviant and abnormal or otherwise – they would never carry out in the real world.

Within this context and for the jury's understanding, this testimony will go toward Mr. Kutzero's defense – that is, it is not the notion of having a real sexual relationship which was Mr. Kutzero's goal, but rather it was specifically the sexual fantasy and/or sexual role play which Mr. Kutzero enjoyed in his chats with Jane Doe.

Clinical testimony regarding sexual fantasy can shed light on what may be an unfamiliar topic to jurors. Fantasizing can seem very real; a layperson would not necessarily know that. Also, the evidence will show via the chats between the two that they were role playing while chatting on many occasions.

As required by the local rule and this Court's Order, a copy of Dr. Smelko's report will be forwarded to Assistant Federal Defender Cyndee L. Peterson when the final draft is received.

RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of February, 2018.

/s/ Evangelo Arvanetes  
EVANGELO ARVANETES  
Assistant Federal Defender  
Counsel for Defendant

**CERTIFICATE OF SERVICE**  
**L.R. 5.2(b)**

I hereby certify that on February 8, 2018, a copy of the foregoing document was served on the following persons by the following means:

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1. CLERK, UNITED STATES DISTRICT COURT
2. CYNDEE L. PETERSON  
Assistant United States Attorney  
United States Attorney's Office  
Counsel for the United States of America
3. JAYCOB TYLER KUTZERA  
Defendant

/s/ Evangelo Arvanetes  
Assistant Federal Defender